

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

RICKY J. SHUGART, #1917471

VS.

DIRECTOR, TDCJ-CID

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CIVIL ACTION NO. 4:16cv129

**ORDER OF DISMISSAL**

The above-entitled and numbered civil action was referred to United States Magistrate Judge Don D. Bush, who issued a Report and Recommendation concluding that the petition for a writ of habeas corpus should be dismissed with prejudice. Petitioner filed objections.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Petitioner to the Report, the Court concludes that the findings and conclusions of the Magistrate Judge are correct. In his objections, Petitioner concedes that his case is time-barred, but asserts that the information upon which he bases his petition was not discoverable because his counsel withheld the specifics of the search and seizure at his property. He also claims that he was distracted and did not hear critical information during the State's case that would have placed him on notice. Petitioner states that he did not become aware of any constitutional violations until he was reading the Clerk's Record on September 10, 2015. However, these assertions do not change the fact that the information was, indeed, discoverable at Petitioner's trial at the latest – March 6, 2014. In his objections and in several subsequent motions and filings, Petitioner simply reurges the constitutional issues raised in his petition. However, he fails to show that his petition was timely filed or that he is entitled to equitable tolling. *Holland v.*

*Florida*, 560 U.S. 631, 645 (2010) (While a court may equitably toll the AEDPA limitations period, a petitioner is not entitled to equitable tolling unless he shows that he has been pursuing his rights diligently and that some extraordinary circumstance stood in his way and prevented timely filing). Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the petition for a writ of habeas corpus is **DENIED** and the case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. It is further

**ORDERED** that all motions not previously ruled on are hereby **DENIED**.  
**SIGNED this 21st day of November, 2016.**

  
AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE